



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J&J Maintenance, Inc.

File: B-244366.2

Date: March 7, 1994

Donald E. Barnhill, Esq., and Joan K. Fiorino, East & Barnhill, for the protester.
Michael L. Sterling, Esq., Vandeventer, Black, Meredith & Martin, for E.L. Hamm & Associates, Inc., an interested party.
Paul M. Fisher, Esq., and Garret L. Ressing, Esq., Department of the Navy, for the agency.
Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. An agency properly justified its source selection decision, where it reasonably found that the protester's and the awardee's proposals were essentially equivalent from a technical standpoint and that the awardee's lower-priced proposal thereby represented the best value to the government.

2. An agency's price analysis was reasonable and adequate in a negotiated procurement for the award of a fixed-price contract, where the agency received adequate price competition, compared the offerors' proposed prices and estimated costs with each other and the government estimate, and reasonably determined that the awardee's price was realistic.

DECISION

J&J Maintenance, Inc. protests the award of a contract to E.L. Hamm & Associates, Inc., under request for proposals (RFP) No. N62470-90-R-4445, issued by the Department of the Navy for the maintenance of family housing projects at the Navy Public Works Center, Norfolk, Virginia.

We deny the protest.

The RFP, issued on March 15, 1991, called for a combination, fixed-price/indefinite-quantity contract for a 1-year period with four 1-year options. The RFP stated that award would be made to that technically acceptable offeror whose offer,

conforming to the solicitation, was most advantageous to the government, considering price and other factors, and advised that the technical and price factors had been assigned equal numerical weights and would be considered on a "50/50" basis.

The technical evaluation consisted of the following factors and subfactors, listed in descending order of importance:

1. Comprehension of Specification Requirements by Service Category:
 - a. Service Calls
 - b. Change of Occupancy Maintenance
 - c. Refuse Collection/Disposal
 - d. Preventive Maintenance/Filter Replacement
 - e. Grounds Maintenance
 - f. Custodial Services
 - g. Playground Maintenance and Repair
2. Method of Operation
3. Key Management and On-Site Supervisory Personnel
4. Organization and Management Plan

The second and third technical evaluation factors were of equal weight; they were less important than the first factor, but more important than the fourth factor.

The rating plan for the Technical Evaluation Board (TEB) provided that offers would be rated as "very good," "adequate," "marginal," or "poor" under each technical factor, with a point score to be assigned within that adjectival rating's point spread. The technical evaluation allowed for a maximum of 1,000 points.¹ A proposal receiving more than 800 points was considered "very good," while a proposal receiving more than 600 points was considered "adequate," and so on.

Regarding price, the RFP designated "Change of Occupancy Maintenance" as indefinite quantity work; the remaining six service categories constituted firm, fixed-price work. The RFP provided that the government would evaluate offers by adding the total price for all options to the total price for the basic requirement. The RFP requested supplemental pricing information from all offerors, in the form of a cost breakdown for the various fixed-price service categories into their direct labor, equipment, and indirect cost

¹The total score represented 500 points for the first evaluation factor, 200 points each for the second and third, and 100 points for the fourth.

elements. The RFP further stated that the offeror's proposed price would be evaluated to determine whether:

"(a) it reflects the prospective contractor's understanding of the project and ability to successfully organize and perform the contract; (b) it is based on adequate estimating procedures and is supported and realistic in terms of the offeror's proposed technical approach and required personnel, equipment and resources identified in the [t]echnical [p]roposal; and (c) it is reasonable when compared to any similar complex efforts."

The RFP cautioned that unrealistic price proposals might result in a reduced technical score.

After designating the foregoing weighted technical and price factors, the RFP provided for an "assessment of the offeror's past performance . . . to evaluate the relative capability of the offeror and the other competitors." The past performance assessment was "not numerically scored," and the RFP did not otherwise indicate the relative importance of this evaluation criterion vis-a-vis the weighted price and technical factors. The RFP stated that "[p]ast performance will be highly influential in determining the merits of the offeror's proposal and in selecting the offeror whose proposal is considered most advantageous to the [g]overnment."

Ten firms, including J&J and Hamm, submitted initial proposals by the October 22, 1991, proposal receipt date. The TEB point scored the initial proposals of Hamm and J&J in the "adequate" range,² and found that they and other proposals were suitable for inclusion within the competitive range.

During November 1991, the contracting officer gathered performance appraisals for each offeror from contracting agencies with which they had similar contracts. The contracting officer graded the offeror's performance under each appraisal as "very good," "adequate," "marginal," or "poor," which were then blended to determine the offeror's overall past performance rating. The contracting officer contacted five agencies for Hamm and translated their responses into one "very good" rating, three "adequate" ratings, and one "marginal" rating. In blending these ratings, the contracting officer rated Hamm's performance

²Hamm's technical proposal was the second highest rated and J&J's proposal was the fifth highest rated.

as "marginal" overall. J&J's performance was rated "adequate" overall.

Among the proposals evaluated, Hamm had the fourth low-priced base year offer of \$6,750,099 and J&J had the fifth low-priced offer at \$6,829,028. These offerors' prices, along with the prices proposed by every other potential competitive range offeror, were significantly lower than the government estimate of \$8,328,696.

The Price Evaluation Board (PEB) performed a price analysis on those proposals which the TEB thought should be included in the competitive range. The PEB identified which line item prices in an offeror's proposal were either significantly overstated or understated, based upon a comparison with the other prices received, the prices for the incumbent contract (held by J&J), the prices for similar contract efforts, and the government estimate, and decided whether the offeror's technical proposal supported any disparate prices. The PEB similarly compared the cost breakdown information furnished by each offeror with the government estimate, e.g., the proposed number of full-time employees, to determine the reasonableness or risk reflected in the offeror's proposed costs.

The offerors' firm, fixed prices for the RFP work were generally consistent with the government estimate and represented, in the PEB's view, a reasonable range of competitive pricing. The disparity between the offerors' prices and the government estimate was primarily for the indefinite quantity work, where the government estimate was 40 percent higher than even the highest proposal price. The PEB considered the government estimate for the indefinite quantity work suspect, particularly since the offerors' proposed prices for this portion of the contract were very tightly clustered. The PEB recommended price discussions be conducted with regard to those line items in each offeror's proposal that appeared unreasonably high or low, and that could not be justified through the technical proposal.

Following the foregoing initial technical and price evaluations, the Navy's Source Selection Board (SSB) established a competitive range composed of seven proposals, including J&J's and Hamm's. In its pre-negotiation Business Clearance Memorandum (BCM), the SSB scored and ranked these proposals, using the conversion formulas prescribed by the Source Selection Plan (SSP) for this procurement. The SSP provided for a 1,000-point technical and price evaluation with a maximum attainable score of 2,000 points. A proposal's price score was derived by use of a normalization formula, whereby the lowest priced proposal would receive

the maximum 1,000 points, and the remaining proposals would receive a relative percentage of 1,000 points, as follows:³

$$\text{Price Score} = \frac{\text{Lowest Offeror's Price}}{\text{Offeror's Price}} \times 1,000$$

There was a similar normalization formula to derive the technical score, so that the highest rated proposal would receive 1,000 points and the remaining proposals' scores would descend from that figure. Applying this evaluation formula, Hamm's combined proposal score was the third highest at 1,660 points, and J&J's proposal score was the sixth-highest at 1,556 points. The BCM report also noted that Hamm's past performance was marginal and that J&J's was adequate.

The agency commenced discussions with all competitive range offerors on October 30, 1992, using the price and technical questions generated by the PEB and TEB. Six of the seven competitive range offerors, including the protester and the awardee, responded with proposal revisions by the December 15 proposal receipt date. J&J's revised technical proposal, although still in the "adequate" range, was the highest rated.⁴ J&J's raw technical score of 721 points slightly surpassed Hamm's score of 707 points and the next two offerors' scores of 701 and 694 points.

Meanwhile, the PEB re-examined price reasonableness based on the offerors' discussion responses and proposal revisions. While J&J did not revise its price proposal, it provided a justification for those prices that the PEB had identified as either excessive or insufficient, which, in most cases, satisfied the PEB's concerns. Hamm revised its price proposal by increasing its prices for those line items that the PEB had identified as too low and by decreasing its prices on those line items identified as too high. The PEB concluded that in most cases Hamm's revised prices were consistent with the average proposal prices and the government estimate.

³J&J protested the use of this formula because it allegedly rewards unrealistic price proposals. We find no merit to this contention. The formula used, which is consistent with the RFP evaluation scheme, is relatively common in evaluating price, see Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566; Didactic Sys., Inc., B-190507, June 7, 1978, 78-1 CPD ¶ 418, and did not abrogate the agency's authority to downgrade unrealistically priced proposals in the technical evaluation.

⁴The highest rated initial offeror withdrew from the competition.

In addition, given the procurement's long duration, the contracting officer in February 1993 contacted those agencies with whom the offerors had ongoing contracts. Based on the updated input, Hamm was found to warrant an "adequate," instead of a "marginal," performance rating; J&J's "adequate" performance rating was continued.

On April 14, the Navy requested BAFOs from the six competitive range offerors and issued a twelfth amendment to the RFP, which advised offerors that one of the housing projects covered by the RFP had closed and had the effect of reducing the estimated number of units to be serviced from 2,820 to 2,220.⁵ At this time, the Navy developed a revised government estimate of \$7,048,197 to reflect the impact of its reduced requirements.

Each of the six offerors responded with BAFOs by the May 14 receipt date. Both Hamm and J&J lowered their BAFO prices. Hamm's base year BAFO price of \$5,918,384 (\$29,591,919 for 5 years) was third low and J&J's BAFO of \$6,391,662 (\$31,958,308 for 5 years) was fourth low. The technical evaluation did not change,⁶ and the normalized scores for the protester's and the awardee's BAFOs were:

| | <u>J&J</u> | <u>E.L. Hamm</u> |
|-----------|----------------|------------------|
| Technical | 1,000 | 981 |
| Price | 789 | 852 |
| Total | 1,789 | 1,833 |

Hamm's combined proposal score was the highest, and J&J's score the second highest.

The PEB performed a price analysis of Hamm's proposal (summarized in the SSB report), as Hamm's proposal appeared to be in line for award. Finding that adequate price competition existed, with Hamm's price roughly midway

⁵J&J claims that the agency intends to close an additional 595 housing units covered by the RFP by 1995, which allegedly represents a significant change in the agency's minimum needs that should have been reflected in an amendment to the RFP. See Federal Acquisition Regulation (FAR) § 15.606(a). J&J did not raise this specific issue, of which it had knowledge at the time it filed its initial protest, until it filed comments on the agency report 2 months later. As a result, the issue is untimely and will be not be considered. See 4 C.F.R. § 21.2(a)(2) (1993).

⁶J&J revised its technical proposal in its BAFO, but the TEB did not believe these changes affected J&J's proposal rating.

between the prices received, the SSB concluded that Hamm's price was fair, reasonable and realistic, notwithstanding that it was 16 percent lower than the government estimate. The SSB noted that the government estimate was unreliable, and exceeded not only Hamm's price, but also the prices proposed by the next three firms in line for award, including J&J.⁷ The SSB surmised that the four highest rated firms used the same methodology in pricing their work, which, unlike the government estimate, accounted for supplier discounts and for economies that may be inherent in business operations of firms this size. In addition, the SSB noted that Hamm revised its price proposal during discussions to raise those prices identified as inadequate and to lower those prices identified as excessive.

In the post-negotiation BCM, the agency recommended Hamm for award and fully stated the reasons for the selection. Although particular attention was devoted to a comparison between Hamm's proposal and that of the lowest-priced, lowest-rated offeror, the Navy expressly found the proposals of Hamm and J&J, along with two other proposals, to be "essentially equal in technical capabilities," as indicated by their relatively close point scores. The agency acknowledged that J&J's technical score was the highest, slightly surpassing Hamm's next best technical score, but found that J&J's technical superiority was not worth \$473,000 per year. The agency also noted that Hamm "earned the greatest number of points," which supported the determination that it represented the best value. Although an evaluation matrix included in the BCM reflected different past performance ratings for the four technically equivalent firms,⁸ the agency did not mention past performance as an award selection discriminator. Based on the foregoing analysis, the agency made award to Hamm on October 14. This protest followed.⁹

J&J argues that the agency did not properly document its source selection decision to show the relative differences among proposals, their strengths, weaknesses, and risks, and

⁷In fact, the government estimate was higher than all of the prices received, save for that of the lowest-ranked offeror.

⁸Among the technically equal offerors, J&J and Hamm received "adequate" past performance ratings, another offeror received a "marginal" rating, and the fourth offeror a "very good" rating.

⁹As J&J filed its protest within 10 days of award, the agency has suspended performance of the contract in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (1988).

the bases and reasons for the decision, as required by FAR § 15.612(d)(2). According to the protester, the agency here merely noted that Hamm earned the greatest number of evaluation points and that J&J's higher-scored technical proposal was not worth the greater price. J&J states that, without more explanation, it is impossible to tell from the record whether the agency performed a reasoned price/technical tradeoff or whether it mechanically accepted Hamm's higher point score as determinative of best value.

J&J's contentions are not supported by the record. In its post-negotiation BCM, the agency states that it considered the proposals of Hamm, J&J, and two other offerors "essentially equal in technical capabilities," notwithstanding that J&J earned a slightly higher technical score than the other offerors. Once the proposals were found to be technically equal, the selection of Hamm on the basis of its lower proposed price was proper. Johnson, Basin and Shaw, Inc., B-240265; B-240265.2, Nov. 7, 1990, 90-2 CPD ¶ 371. In any case, the agency performed an adequate price/technical tradeoff, acknowledging J&J's slightly higher technical score but determining that it was not worth the requisite price premium, and the reasonably-based point scores confirmed the agency's judgment that the two proposals were essentially equal from a technical standpoint and were distinguished on the basis of price.¹⁰ See DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69; Minigraph, Inc., B-237873.2, May 14, 1990, 90-1 CPD ¶ 470. Therefore, we find that the source selection was properly documented and reasonable.

In its initial protest, J&J argued that its proposal "should have been found far technically superior" to Hamm's, and worth the associated price premium, mainly relying on the technical advantage that J&J assertedly should have enjoyed by virtue of its incumbency. In its report, the agency provided the proposals and the complete evaluation documentation, which counsel for J&J received under a protective order issued by our Office. Despite having access to this documentation, J&J did not substantively respond to the agency's determination that J&J's and Hamm's technical proposals were essentially equal or explain why J&J was deserving of a higher rating (or Hamm a lower

¹⁰Contrary to J&J's argument, reasonably-supported point scores that are consistent with the RFP evaluation criteria can be used as a tool in making an award decision.

PCL/American Bridge, B-254511.2, Feb. 24, 1994, 94-1 CPD

¶ ____.

rating).¹¹ Thus, we have no basis to find that the relative ratings of Hamm and J&J were unreasonable. See MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 167.

J&J also challenges the Navy's revised past performance evaluation, in which the contracting officer raised Hamm's rating from "marginal" to "adequate," but maintained J&J's "adequate" rating. J&J claims that the agency should have affirmed Hamm's "marginal" rating and raised J&J's rating to "very good."

Based on our review, we are unable to conclude that the agency lacked a reasonable basis to increase Hamm's performance rating from "marginal" to "adequate." When the contracting officer first performed a past performance evaluation in November 1991, Hamm received three "adequate" ratings, one "very good" rating, and one "marginal" rating, which the contracting officer blended into an overall "marginal" rating. When the contracting officer updated Hamm's performance record in February 1993, by contacting two ongoing employment references, he determined that Hamm had maintained an "adequate" performance level on one contract and improved its performance level from "adequate" to "very good" on another contract with the National Aeronautics and Space Administration (NASA), which justified an increase in Hamm's overall performance rating from "marginal" to "adequate." While J&J questions whether Hamm's performance really had improved on the NASA contract, we cannot say that even an "adequate" rating on that contract would not have justified an overall "adequate" rating, since only one of Hamm's seven appraisals yielded a "marginal" rating.

To the extent that J&J challenges its own performance rating, the protester is unable to establish that it would have been in line for award, even if its past performance

¹¹The record shows that the TEB initially rated J&J's comprehension of the specification requirements as "marginal" because the protester had misinterpreted several RFP requirements which were distinct from those contained in its incumbent contract. Only as a result of discussions was J&J able to raise its rating to "adequate" for this most important evaluation factor, although its score remained lower than Hamm's. In addition, the evaluators considered J&J's quality control program "suspect and not designed consistent with serious plans to actually carry it out," which affected the protester's rating under the next most important evaluation factors, "Method of Operation" and "Key Management and On-Site Supervisory Personnel," where the protester was also considered "adequate."

21143

were regarded as "very good."¹² The post-negotiation BCM does not reflect that the agency even considered past performance in differentiating between the four technically equivalent proposals. Instead, the agency made price the discriminator between the technically equal proposals using the weighted price and technical evaluation factors. Since the RFP allocated the full weight of the evaluation between the technical and price factors, and did not specify the evaluation weight of past performance, the agency properly gave this criterion little, if any, weight in the award evaluation.¹³ See Management Tech. Servs., B-251612.3, June 4, 1993, 93-1 CPD ¶ 432; H.J. Group Ventures, B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203. Under the circumstances, J&J was not prejudiced by failing to achieve a "very good" performance rating, even assuming it was deserved. See TRI-COR Indus., Inc., B-252366.3, Aug. 25, 1993, 93-2 CPD ¶ 13.

J&J next complains that the agency failed to perform an adequate analysis of the awardee's proposed price. The protester notes that Hamm's proposed price on certain line items was below both the government estimate and the other offerors' prices, and argues that the agency should have adjusted Hamm's prices upward, perhaps to a level in excess of J&J's price. J&J also claims that the price analysis was flawed because it did not account for various changes in the workloads and wage rates from those set forth in the RFP, as amended.

Cost realism, which measures the likely cost of performance, is a mandatory consideration for the award of cost-reimbursement contracts, because the government will generally bear the actual costs of performance. Cost realism is typically not a factor in the evaluation of proposals when a fixed-price contract is contemplated, because the government's liability is fixed and the contractor bears the risk of any cost escalation. Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115. However, since the government exposes itself to the risk of poor performance when a fixed-price contractor is forced to provide services at little or no profit, an agency may, in its discretion, provide in an RFP for a price realism analysis as part of the technical evaluation. Id.; PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251779 et al., May 4, 1993, 93-1 CPD ¶ 366. However,

¹²We note that J&J did receive better performance ratings than Hamm, but these were not sufficient to raise its overall rating to "very good."

¹³The relative unimportance of the past performance criterion was also evident in the agency's competitive range determination and the evaluation plan for this procurement.

contrary to J&J's assertions, in evaluating an offeror's fixed price, an agency may not make upward price adjustments for cost elements in a fixed-price proposal that agency contracting officials think may be priced too low. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, supra.

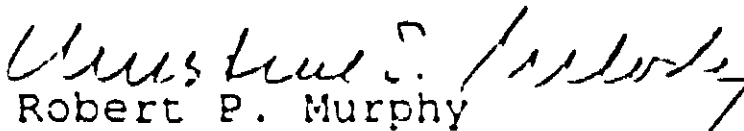
The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. Here, the PEB compared offerors' initial and revised proposal prices against each other, the government estimate, the current contract prices, and other, similar contract prices; isolated any disparate prices in the firm's proposal; and considered whether the firm's technical approach supported the disparate price. The PEB similarly reviewed each offeror's supplemental cost breakdown information against the solicitation's requirements for each service category, to the extent necessary to assess any cost risk in the proposal. The analysis was properly based upon the proposals' responses to the workloads and labor rates stated in the RFP, as amended. See PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381. This price analysis, performed consistent with the techniques recommended in FAR § 15.805-2, persuaded the PEB that Hamm's prices were within a reasonable price range. Hamm's price was only 6 percent lower than the average proposal price, which resulted from vigorous price competition in this case, and was only 8 percent lower than J&J's price. Based on our review, we find the agency reasonably evaluated Hamm's price proposal as realistic.¹⁴ See Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339; Family Realty, supra.

The protester also contends that the price discussions held with it were inadequate because its BAFO price for one of the RFP service categories, Service Calls, was higher than the government estimate. At the time J&J submitted its initial proposal, it had priced Service Calls at \$1,824,087, which virtually matched the government estimate of \$1,845,060 and rendered discussions wholly unnecessary on this point. In its BAFO, J&J reduced its price for Service Calls to \$1,643,822, which was approximately 8 percent higher than the revised government estimate of \$1,531,400. There is no indication in the PEB's post-BAFO report that J&J's price, while lower than the government estimate, was considered unreasonable. However, even if it was, an agency is not compelled to reopen discussions with an offeror that

¹⁴We have not discussed every one of J&J's contentions with regard to the price analysis, but did consider them in reaching our decision.

introduces a deficiency into its BAFO.¹⁵ Inner Harbor W. Joint Venture, B-249945.3, Mar. 11, 1993, 93-1 CPD ¶ 232.

The protest is denied.


for Robert P. Murphy
Acting General Counsel

¹⁵J&J, in its initial protest, challenged the award for a variety of additional reasons, to which the agency report fully responded. J&J never substantively responded to the agency's explanations, although it prefaced all subsequent protest correspondence with the statement that it "hereby incorporates [its] [p]rotest in these [c]omments as though set forth verbatim at this point and does not waive any argument heretofore made by any prior correspondence." Based on our review, we find no merit to J&J's remaining contentions. See MAR Inc., supra.